

Nonprofit Alert: Political Advertising on Social Media — New Requirements Emerge in Advance of the 2018 Elections

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Federal and state election laws have long required that certain types of political advertisements contain a disclosure identifying the person or group who paid for the ad. But because these laws largely predate the internet, online political ads have largely been exempt from disclosure requirements.

In light of apparent meddling by foreign actors in the 2016 Presidential election through fake social media accounts, lawmakers and tech-industry professionals have been pressured to adopt rules dealing with both accountability and transparency in online political advertising. In response to that pressure, Twitter and Facebook (which also owns Instagram) recently adopted new rules that apply to certain types of political advertisements posted on their platforms. This alert discusses these new requirements and compares them to federal and Minnesota disclosure laws that apply to independent expenditures.

Facebook and Instagram

On May 24, 2018, Facebook rolled out new disclosure rules that apply to political ads posted on both Facebook and Instagram. Facebook claims its new rules were designed to "prevent future abuse in elections —and to help ensure you have the information you need to assess political and issue ads[.]" Under these new rules, only authorized Facebook users who have confirmed their identity and location with Facebook are allowed to post political ads on the Facebook and Instagram platforms. Facebook has stated that it will delete ads that do not comply with the new rules and block users who repeatedly fail to comply.

Facebook's new rules affect only *promoted* political content—e.g., traditional "paid for" ads and "boosted content" that Facebook users pay in order to target particular audiences at particular times—but the rules broadly define the type of political content that will be covered. For example, covered content includes not only ads that expressly advocate for or against specific candidates, but also voter education, registration and get-out-the-vote communications, communications on referendums and ballot initiatives, and issue ads on any national legislative issue of public importance in a place where the ad is run. Facebook pledged to maintain a list of issues that will be subject to its rules, which include abortion, guns, the economy, crime,



education, health, environment, and values.

In order to post promoted political content on Facebook under the new rules, users must:

1. Register with Facebook;
2. Include a "paid for" disclaimer at the top of each political ad; and
3. Disclose information about the target audience and money spent on the ad.

Twitter

On June 28, 2018, Twitter rolled out new rules for paid political ads posted on its platform. Compared to Facebook, the Twitter rules apply to a much narrower universe of political ads—namely, those that expressly advocate for or against a clearly identified candidate for federal office. The Twitter rules do not apply to issue ads, nor do they apply to ads regarding state and local candidates.

Under the new rules, before advertisers post express advocacy ads on Twitter in connection with a federal election, they must file for certification with Twitter. The self-certification process requires applicants to confirm their identity and physical location, and that they are not foreign nationals who are prohibited from influencing federal election campaigns. Covered posts made from certified Twitter handles will automatically be labeled with a disclosure identifying them as political advertisements and identifying the user that paid for the ad. In addition to the self-certification requirements, Twitter requires that certified accounts (i) maintain a profile photo, header, and website consistent with the Twitter handle's online presence; (ii) contain a link in their bio to a website that provides valid contact information; and (iii) contain a disclaimer in their bio stating "Owned by [certified entity name]" if the handle name is not related to the name of the certified entity.

Comparing Social Media Disclosure Requirements with Federal and State Law

As noted above, federal and state election laws have long required that certain types of political advertisements contain a disclosure identifying the person or group who paid for the ad. These rules still



apply, and are in addition to any rules that a social media site may also require.

Because most nonprofits running these types of advertisements are doing so as independent expenditures, the chart below compares the new Facebook and Twitter disclosure requirements for political advertisements with the requirements that apply to independent expenditures under federal and Minnesota law.

For more information, contact the Gray Plant Mooty Nonprofit and Tax-Exempt Organizations team.